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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,103	01/29/2002	Eiichi Daikai	011639	1201

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ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP  
1725 K STREET, NW  
SUITE 1000  
WASHINGTON, DC 20006

EXAMINER

HOOK, JAMES F

ART UNIT PAPER NUMBER

3752

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/058,103

Applicant(s)

DAIKAI ET AL.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Note, it is considered known in the art that Youngs modulus is the same or equivalent to the modulus of elasticity.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Krevor. The patent to Krevor discloses the recited vibration absorbing hose comprising at least one rubber layer of a rubber composition having a Youngs modulus, or an elastic modulus,  $10^7$  to  $10^9$  Pascals which would equal 1-100MPa at a frequency range of 10-4000Hz, at an ordinary temperature between 0 and 30 degrees C, and a damping factor tan delta of at least 0.5, where a reinforcing layer can be provided 24 between rubber layers, and it is considered that a rubber having all the same properties would inherently meet an elongation of strain of 0.1% as such is an inherent property of the material. The same is said of the 50% tensile stress the material would also meet because of the inherent properties of the material. Should, however, it be considered that the material in Krevor

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is not the same material as applicant is claiming then it is considered an obvious choice of mechanical expedients to use routine experimentation to arrive at optimum values of strain as such would only require routine skill in the art. It is noted that elongation strain does not seem to have a clear definition and it is possible that applicant is in fact claiming two things that are equal, strain and elongation. If such is the case it is recommended that the language of the claims be checked and corrected appropriately to insure the claim can be interpreted correctly. The use of the hose to conduct mediums is considered merely intended use where the structure set forth in Krevor is capable of conducting mediums in the same manner applicants is, where such fails to further limit the body of the claim.

***Allowable Subject Matter***

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed March 23, 2004 have been fully considered but they are not persuasive. Essentially, many of the arguments are directed toward the new language provided in the claims, however, it should be noted that this material is placed solely in the preamble and sets forth no more than intended use of the material cited in the body of the claim, and the body of the claim is a self contained description of a material forming at least one layer of a hose. It has been held that the preamble of a

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claim does not further limit the claim if it merely sets forth intended use and where the body of the claim is a self contained description. See MPEP 2111.02. Further, Krevor teaches the use of rubber, as well as, elastomers, however, it is noted that the elastomers cited in Krevor includes some of the same materials cited by applicant as useable rubbers such as acrylonitrile/butadiene, therefore, it is considered that Krevor is in fact reciting the use of the same types of rubbers as applicant is claiming. With respect to the intended mediums that applicant feels cannot be conducted by the article of Krevor, it is noted that such arguments are more detailed than the claim language where there is no claim language further limiting types of mediums to be conducted, and further the additional language of intending to pass mediums in the hose is considered to be merely intended use and a preamble limitation that fails to further limit the claim structure as set forth above. With respect to the arguments set forth in page 6 of the response of March 23, 2004, first paragraph, the claim body only claims a composition of one layer, any arguments directed toward structure not found in the body of the claim is more detailed than the claim language allows and is therefore not persuasive, therefore the teachings of Krevor cover at least one layer made of the recited material of the claims. With respect to the applicants interpretation of Krevor, such appears to be incorrect when Krevor discloses that outer layer can be formed of a thermoplastic or elastomer where as noted above the elastomers cited overlap those set forth by applicant as useable rubbers (col. 4, lines 31-39) and further that the inner and outer layers can be formed of the same or different material as desired (col. 8, lines 21-25) thereby teaching that the inner and outer layer of Krevor can be formed of

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thermoplastics or elastomeric materials, where such are known to be forms of rubber as set forth by applicant. Therefore, the argument that Krevor does not teach more than a single layer of rubber is not persuasive. With respect to the argument that Krevor does not teach "all" structural layers formed of rubber, such is not persuasive when the claim language only requires that at least one layer be formed of rubber with respect to claim 1, with respect to claim 4, the above response applies where Krevor teaches the use of more than one elastomeric layer which are the equivalent of rubber layers as set forth by the applicant. With respect to the attempt to limit the claim language to a single layer structure only, such is not persuasive when the claim language recites at least one which includes more than one layer structure as well, where "only a single layer" never appears in the claim language, and therefore such an argument is more detailed than the claim language supports.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Daikai (295) and Wang (166) disclosing state of the art rubber hoses and dampening characteristics of rubber hoses.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

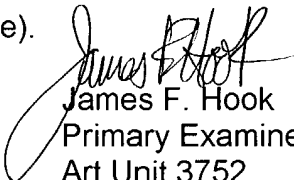
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James F. Hook  
Primary Examiner  
Art Unit 3752

JFH